

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION

On Its Own Motion

Revision of 83 Ill. Adm. Code 280.

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Docket No. 06-0703

REPLY BRIEF ON EXCEPTIONS OF ILLINOIS-AMERICAN WATER COMPANY

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I. INTRODUCTION

While Illinois-American Water Company (“IAWC” or the “Company”) appreciates the continuing efforts of the Staff of the Illinois Commerce Commission (“Staff”) and the other Intervenors in this proceeding to fashion a revised Part 280 which protects both the individual interests of, and the relationship between, Illinois utility consumers and the utilities that serve them, IAWC nevertheless believes the Commission must reject Staff and certain Intervenors’ exceptions to particular findings in the Administrative Law Judge’s Proposed Order (“ALJPO”) and First Notice Proposed Rules (“ALJPO Attachment 1”). For this reason, IAWC respectfully submits the instant reply to the Briefs on Exceptions filed by Staff and intervening parties the Citizens Utility Board, the City of Chicago and the People of the State of Illinois (collectively, the Government and Consumer Intervenors or “GCI”); the City of Chicago, individually; AARP together with the People of the State of Illinois (“AARP/AG”); and South Austin Coalition Community Council and Community Action for Fair Utility Practice (collectively, the Low Income Residential Customers or “LIRC”). In taking exception to certain aspects of the ALJPO and First Notice Proposed Rules, those parties advocate positions which are unsupported by, or even contrary to, the record evidence. Their positions should be rejected.

II. ARGUMENT

A. Section 280.10 Exemptions

Response to GCI Exception 1

The ALJPO adopts without modification Staff’s proposed Section 280.10 which sets forth the requirements a utility must fulfill to achieve a waiver or exemption to the new Part 280 rules. (ALJPO, p. 21; ALJPO Attach. 1, pp. 3-4.) In so doing, the ALJPO specifically rejects GCI’s proposal to add language to that section which would require annual documentation, evaluation, reporting, and Commission approval of any such waivers or exemptions. (ALJPO, p.

21.) GCI take exception to that rejection. (GCI BOE, pp. 2-4.) They claim the record warrants adoption of their proposal and suggest it would not impose a significant hardship on utilities.

(Id., p. 2.) In fact, the record supports the opposite conclusion.

As correctly noted by the ALJPO, absent from GCI's proposal (and anywhere in the record) is an explanation of how, procedurally, approved exceptions would be brought to the Commission for annual re-approval. (ALJPO, p. 17 (summarizing Staff's position).) Moreover, as the ALJPO also notes, a utility could not meet the requirements of proposed Section 280.10 without explaining exactly why it was seeking a waiver. (Id.) As such, GCI's proposal is not only unexplained, but also redundant. Certainly, the record does not warrant adoption of a vague and superfluous proposal. GCI's unsupported exception to the ALJPO in this regard should be dismissed.

In the absence of any explanation for their proposal, it can only be assumed GCI intend to require utilities to annually file with the Commission, and the Commission initiate a docketed proceeding, for the purpose of re-documenting, reevaluating, re-reporting and re-approving waivers and exemptions to Part 280. Given that GCI's proposal requires *annual* reevaluation, the practical implication is that the resulting docketed proceedings would be numerous. Although GCI claim the record suggests this process would not burden the utilities (GCI BOE, p. 2), the resulting unquestionable burden would fall not only on the utilities, but also on the Commission and its Staff.

GCI claim their proposal is consistent with Staff's intention that the new Part 280 rules be comprehensible for consumers and consumer advocates. (GCI BOE, p. 2 (quoting Staff Ex. 3.0 (Rev.) (Howard & Agnew Sur.), p. 4).) In fact, GCI assert, "[c]ustomers and consumer advocates should not have to guess whether a waiver has been granted *and should not be*

required to scour Commission filings to make that determination.” (Id., p. 3 (emphasis added).)

However, the result of GCI’s proposal would be just that—consumers *would* be required to scour the Commission’s files, presumably on e-Docket, to determine whether a utility has complied with the annual requirement that an exemption be re-approved. Under the ALJPO’s findings, only one source need be consulted to determine whether an exemption has been granted—the utility’s Commission-approved tariff.

In addition to the burden and confusion GCI’s proposed annual re-approval requirement would cause customers, let alone the obvious burden it would place on the Commission and its Staff, GCI ignore the cost implications of their proposal. That is, annual filings by utilities to seek Commission re-approval of an already approved exemption could be expected to require increased utility time and resources. The resulting increased costs would be borne by all ratepayers. GCI does not dispute this. (See Tr. 296:7-16 (GCI witness Ms. Alexander acknowledging the incremental costs resulting from implementation of revised Part 280 will be borne by all utility ratepayers).)

In sum, GCI’s claim their recommendation “is a common-sense protection that should be adopted” (GCI BOE, p. 3), is anything but true. Their call for exemptions from Part 280 to be annually documented evaluated, reported to, and approved by the Commission is impractical, burdensome and expensive not only for Illinois utilities, the Commission and its Staff, but also for the body of ratepayers those entities serve. The Commission therefore should approve the ALJPO’s findings regarding proposed Section 280.10.

B. Section 280.15 Compliance

Response to Staff Exception II

Staff takes exception to the ALJPO’s authorizing utilities a maximum of 24-months from the effective date of the new rules in which to implement the requirements they impose. (Staff

BOE, pp. 2-3; ALJPO, p. 32; ALJPO Attach. 1, p. 4.) Staff reiterates its concern that utilities may prioritize implementation of those provisions of the new rules which benefit utilities over those which benefit customers. (Staff BOE, p. 2.) Although Staff concedes the record indicates “implementation could reasonable take a significant amount of time,” (*id.*, p. 3), it believes “two years is simply too long” (*id.*). Staff therefore suggests a “compromise” of 12 months. (*Id.*) But Staff’s 12-month implementation period proposal is no more supported by the record than its original 6-month proposal. As the ALJPO aptly recognizes, “the overwhelming weight of the evidence suggests that conforming utility systems to these rules will be expensive and time consuming.” (ALJPO, p. 32.) In fact, the record is replete with evidence—namely, utility IT expert testimony—that implementation is expected to take approximately 24 months. (*See, e.g.*, Nicor Gas Ex. 1.0 (Lukowicz Dir.), pp. 4:65-71, 9:181-88; Nicor Gas Ex. 4.0 (Grove Reb.), pp. 16:366-17:379; Ameren Ex. 2.0 (Solari Dir.), p. 2:24-29; MEC Ex. 1.0 (Knight Dir.), pp. 35:780-36:783; Nicor Ex. 2.0 (Grove Dir.), pp. 8:164-9:188; ComEd Ex. 1.0 (Walls Dir.), p. 16:333-37; Tr. 560:4-6, 560:24-561:11 (IAWC witness Mr. Ruckman).) The ALJPO appropriately deferred to that testimony over the original 6-month compliance period proposed by Staff, who admittedly “lacks IT expertise and is uncertain as to how long [the] timeline should be.” (Staff Init. Br., p. 7. *See also* Tr. 791:21-792:1.) The Commission likewise should defer to the record evidence and the ALJPO’s well-supported conclusion regarding proposed Section 280.15. It should dismiss Staff’s baseless, new 12-month proposal.

Response to GCI Exception 3

The proposed new rules adopted by the ALJPO are substantially different from the current Part 280. Thus, it is not surprising that, like Staff, “GCI accepts the Proposed Order’s determination that some time is required to make necessary changes in certain utility processes.” (GCI BOE, p. 4.) Nevertheless, GCI takes exception to the ALJPO’s finding that utilities should

be permitted up to 24 months from the effective date of the new rules to implement their requirements, and instead advocate a period of 24 months effective from when the Commission issues its First Notice Order. (GCI BOE, p. 5.) Without citation to the record, GCI claim “[t]he Commission’s First Notice decision *should* provide enough specificity and certainty about the ultimate content of the rules” (*Id.* (emphasis added).) But, in so claiming, GCI implicitly acknowledge that the ultimate content of the new rules *could*, in fact, be different than that approved by the Commission’s Order. The utilities supplied evidence that, until the particulars of the new rules are known with assurance, they cannot begin in earnest to modify their IT systems and business processes. (See, e.g., Tr. 560:4-6, 560:24-561:11 (IAWC witness Mr. Ruckman); MEC Ex. 1.0, pp. 35:780-36:783; Nicor Ex. 4.0, p. 16:367-68; ComEd Ex. 1.0, p. 16:333-37.) The utilities also explained it would not be cost-effective to do so. (See, e.g., Tr. 560:6-11 (IAWC witness Mr. Ruckman); MEC Init. Br., p. 9 (“MidAmerican has not begun work on system changes. It is not cost effective for MidAmerican to do so until final rules are adopted.”).) The record therefore reflects the prudence of the decision to wait until the new rules are *final* before beginning system modifications. The Commission should approve the ALJPO’s findings based on that record evidence, and dismiss GCI’s unsupported contentions.

GCI also advocate additional process regarding utilities implementation of the new rules’ requirements, including specific waivers for other than immediate compliance, preconditioned on interim solutions being put in place. (GCI BOE, pp. 5-10.) Yet the ALJPO’s proposed Section 280.15 specifically requires implementation “as quickly as reasonably practicable” and further mandates that “that each utility post and update a ‘checklist’ on its website so that the public can be informed when the utility has brought itself into compliance with each new requirement of Part 280 as rewritten.” (ALJPO Attach. 1, p. 4.) As such, GCI’s proposed additional process is

unnecessary and redundant. It should be rejected and the ALJPO's findings regarding proposed Section 280.15 as well as that proposed section should be approved as currently drafted.

C. Section 280.20 Definitions, "Low income customer"

Response to LIRC General Discussion

As discussed in IAWC's Brief on Exceptions, the ALJPO adopts a definition of "low income customer" which treats water and sewer utilities disparately. The ALJPO makes a gas or electric utility customer's "low income" status dependent upon qualification under the Illinois Energy Assistance Act, to be effective "when the Low Income Home Energy Assistance Program (LIHEAP) administrator notifies the customer's utility of the customer's low income status," but requires water and sewer utilities—who do not and cannot participate in LIHEAP—to rely on the *customer* to "provide proof" of their "low income status under the income criteria of Section 6 of the Energy Assistance Act of 1989," without defining what that "proof . . . of . . . status" is. (IAWC BOE, pp. 3-4; ALJPO, p. 41; ALJPO Attach. 1, p. 5.) Intervenor LIRC, who operates a LIHEAP application intake site (see LIRC Ex. 2.0 (Vondrasek Dir.), p. 3), does not propose any specific revisions to the definition of "low income customer" adopted by the ALJPO. (LIRC BOE, p. 2.) However, LIRC raises a concern that defining a customer's low income status based on eligibility for the LIHEAP program "effective when the utility is notified by the LIHEAP administrator"¹ inappropriately limits the population of customers who will qualify as "low income" under the new Part 280 and prevents "the greater protections intended for low income customers [from being] achieved by all." (Id.)

LIRC's concern in this regard reinforces the concern raised by IAWC that the ALJPO's definition of "low income customer" places a disparate burden on water and sewer utilities, as

¹ This is a partial misstatement. As discussed, under the definition of "low income customer" adopted by the ALJPO, only gas and electric utilities can be "notified by the LIHEAP administrator." Water and sewer utilities, in contrast, must rely on the customer to provide "proof" of their low income status. (IAWC BOE, pp. 3-5.)

opposed to electric and gas utilities. While limiting “low income” gas and electric customers to a narrowly defined group regarding whose status a LIHEAP agency has notified the gas or electric utility, the definition authorizes a potentially broader, and more vaguely defined, universe of “low income” water and sewer customers. This is because the latter need only provide (undefined) “proof” of their “status under the income criteria of Section 6 of the Energy Assistance Act of 1989” (ALJPO Attach. 1, p. 5), which could be a letter from the LIHEAP agency; or perhaps the customer’s paystub, W-2, or prior year’s tax return; or perhaps a bill from another utility indicating low income status. In short, more customers could be low income customers under Part 280 for water and sewer utility service than for electric and gas utility service. Such a difference could be confusing for customers who receive both water and electric or gas service from utilities subject to Part 280. IAWC submits this supports its position on exceptions—that the definition of “low income customer” adopted by the ALJPO should be revised to permit water and sewer utilities to define and limit the “proof” of LIHEAP low income status (such as a notification letter from the LIHEAP agency) they will accept. (See IAWC BOE, pp. 3-5.)

D. Section 280.30 Application—Subsection 280.30(j)(1)

Response to GCI Exception 7

The proposed rules adopted by the ALJPO fill a void in the current Part 280 rules—they impose utility service activation timelines. (ALJPO Attach. 1, pp. 10-11.) Those activation timelines—4 calendar days after approval of an application for service for electric, water and sewer utility service, and 7 calendar days for gas—“strike a fair and necessary balance between what can reasonably be achieved by utilities and the logical desire for consumers to have service on as soon as possible.” (ALJPO, p. 75 (citing Staff Init. Br., pp. 19-20; Staff Ex. 2.0 (Agnew & Howard Reb.), pp. 23-25.) Yet, GCI are not satisfied. They take exception to those timelines

and argue they fail to reflect “reasonable activation periods.” (GCI BOE, p. 18.) Rather than relying on what the utilities in Illinois have determined are “reasonable activation periods” and the record in this proceeding, however, GCI contend the Commission should ignore that record evidence and adopt the activation periods imposed by other state commissions. (*Id.*) It should not. The record here supports the balanced approach adopted by the ALJPO. As IAWC explained in testimony and in briefing, connecting or reconnecting sewer service is time-consuming, labor intensive and disruptive. This is because sewer services do not have shut-off valves; connection and reconnection require a dig and unplugging of the sewer connection. (IAWC Init. Br., pp. 53-54; IAWC Ex. FLR-2.0, p. 13:275-84.) Thus, the 4-calendar day connection timeframe imposed by the ALJPO is appropriate. In taking exception to that finding, GCI simply ignore the practicalities of service connection reflected by the record. Because the ALJPO did not, its findings in this regard should be approved.

GCI also contend “[t]here is no evidence in this record that Illinois utilities are incapable of activating utility services as quickly as utilities in other states or that the statutory requirement for service ‘without delay’ is subordinated to utility management preferences.” (GCI BOE, p. 19.) That argument ignores the language adopted by the ALJPO mandating activations “at the *earliest possible date*” with “*no more than* four calendar days after the approval of the application” being the maximum period permissible absent customer request. (ALJPO Attach. 1, pp. 10-11 (emphasis added).) Rather than acknowledge that this language is tantamount to the “without delay” standard cited by GCI, GCI improperly implies utilities would *want* to take longer to connect service and thereby delay collections. Yet, GCI does not cite to any record evidence in support of such implication. Nor could they—such a suggestion is nonsensical. GCI’s meritless position should be rejected.

E. Section 280.60 Payment—Subsection 280.60(d)(3)

Response to Staff Exception VII

The ALJPO finds imposing a late fee on overdue budget billing amounts preferable to terminating a customer's participation in a budget payment plan for late payment. (ALJPO, p. 129.) Accordingly, the ALJPO adopts language permitting the assessment of a late fee on the overdue budget installment amount, but not the accumulated budget payment plan balance. (ALJPO Attach. 1, pp. 23-24.) Staff takes exception to that finding and language because it believes "budget plans have too many moving parts to allow for accurate late fee assessments." (Staff BOE, p. 11.) Staff contends the ALJPO "would assess a percentage based late fee upon a fictional amount owing (the budget plan amount) and not the true amount owed." (*Id.*) But Staff fails to grasp that the budget installment amount owing is anything but "fictional." As recognized by the ALJPO, it is the installment amount agreed to between the customer and the utility. It represents an actual payment that is reflected on a monthly bill and that the utility expects to receive. The fact that the budget plan balance eventually will be trued-up does not change this.

Notably, Staff acknowledges "late fees are intended to incent customers to pay timely and to mitigate some of the damage caused by late arriving revenue for utilities." (*Id.*) This is exactly why late fees should be assessed on budget plan installment amounts. Utilities rely on timely payments as part of their cash flow, and the failure of a customer to make timely payments under that plan causes increased cash working capital costs to the utility, which costs are borne by the general body of ratepayers. (*See, e.g.,* IAWC Ex. FLR-1.0 (CORR.), p. 7:158-8:169; IAWC Ex. FLR-2.0, p. 8:162-76.) Installment payments made under a budget payment plan are no exception.

Staff claims it "is not persuaded that utilities are harmed by budget billing payments that

arrive late when customers are already running a credit surplus on their actual bill amounts.” (Staff BOE, p. 11.) But the record shows that late payments adversely impact utilities’ cash flow, whether such payments are on a budget plan or not. Staff’s argument here is related to its confusion regarding the appropriate amount on which to assess the late fee. The late fee is assessed on the installment amount. That a customer may, at the time of the true-up, be entitled to a credit for the period of the budget payment plan neither detracts from the need to incentivize that customer to pay the agree-to installment amounts timely throughout the course of the plan nor the utility’s reliance on those timely installment payments for cash flow purposes. Staff’s concern simply is misplaced.

In sum, budget billing is a special accommodation which the utility makes to help its customers better manage their finances, and such accommodation comes at an increased costs to all customers. As such, as the ALJPO recognizes, it is inappropriate to exempt from late fees those customers utilizing a budget payment plan. Instead, it is appropriate to incentivize timely payments under a budget payment plan by imposing late fees on late payments even though those payments are levelized. (IAWC Ex. FLR-1.0 (CORR.), pp. 7:162-8:169; IAWC Ex. FLR-2.0, p. 8:162-76.) The ALJPO’s well-founded findings in this regard should be approved.

F. Section 280.80 Budget Payment Plan—Subsection 280.80(i) (proposed by Staff)

Response to Staff Exception VIII

Recognizing termination of a budget payment plan for a single late or partial payment is too harsh a consequence, the ALJPO finds utilities instead should be permitted to issue a written warning about cancellation of a budget plan for further late payments and charge a late fee on the overdue part of the budget installment amount. (ALJPO, pp. 138-39.) As such, the ALJPO rejects Staff’s proposed Section 280.80(i), which would prohibit utilities from assessing a late

payment fee on an overdue budget payment plan installment amount. (*Id.*, p. 139.) Staff continues to advocate the harsher result. For the same reasons Staff takes exception to the ALJPO’s proposed Section 280.60(d)(3) (*see supra* II.E (Section 280.60(d)(3))), Staff argues its proposed Section 280.80(i) should be retained. (Staff BOE, pp. 12-13.) As explained above, Staff’s contentions are misplaced and should be dismissed. Late payment fees are intended to be the main incentive to timely payment, whether that payment is made on a budget payment plan or not. Further, late payment fees produce revenues that benefit all customers. (IAWC Ex. FLR-2.0, pp. 7:156-8:61.) The ALJPO’s rejection of Staff’s proposed Section 280.80(i) is logical and should be approved.

**G. Section 280.130 Disconnection of Service—Subsection 280.130(e)(5)
(proposed by AARP)**

Response to AARP/AG Exception, City of Chicago Exception 1, LIRC Exception 3

In briefs filed separately from GCI, the AG (together with AARP) and the City of Chicago take exception to what they perceive as the ALJPO’s elimination of the “premises visit before disconnection” requirement of the current Part 280 rules, in the ALJPO’s rejection of AARP-proposed Section 280.130(e)(5) mandating the same. (*See generally* AARP/AG BOE; City of Chicago BOE.) LIRC also takes exception to the ALJPO’s rejection of proposed Section 280.130(e)(5). (LIRC BOE, pp. 4-5.) Notably, the exceptions taken by these intervenors concern only *energy* utility service (gas and electric) necessary for heating and cooling; none so much as reference water and sewer utility service. (*See, e.g.,* AARP/AG BOE, p. 2 (“Access to *heating and cooling* is a significant health and safety issue, especially for older persons and other vulnerable customers. Disconnection of *energy* service can result in serious health consequences, include death due to hypothermia or exposure to extreme heat.”) (emphasis added).) These intervenors do not explain why their proposal should apply to water and sewer utilities. It should

not.

Nevertheless, these intervenors' position should also be rejected because it is premised on a fundamental flaw: that utility personnel are able to, on site, handle customer health and safety issues. The ALJPO recognizes this. It finds the suggestion disconnections should be preceded by an in-person visit from utility personnel to be belied by the fact utility personnel are not trained or empowered to address medical or mental health questions that may arise from that contact. (ALJPO, p. 189.) AARP/AG claim this reasoning is faulty because AARP-proposed Subsection 280.130(e)(5) "does not require a utility employee to resolve such problems; rather it simply provides the opportunity to inquire about or otherwise *identify* potential health and safety problems." (AARP/AG BOE, p. 3 (emphasis added).) But, that is precisely the point—the proposed subsection assumes utility personnel are trained to recognize, identify and evaluate potential health and safety problems sufficiently enough to act on them; but, as the ALJPO recognizes, they are not. Moreover, while the AG advocates medical privacy on the one hand (see GCI BOE, pp. 10-11 (taking exception to the ALJPO's definition of "Medical Certificate" in proposed Section 280.20 on this ground)), they indicate it is appropriate for utility employees to discuss medical emergencies and medical equipment with customers on site. (AARP/AG BOE, p. 3.) Such inconsistent reasoning cannot serve as the basis to alter the ALJPO's well-founded conclusion.

Moreover, AARP/AG admit the "health and safety effects" of a lack of a premises visit requirement are "unknown." (AARP/AG BOE, p. 4.) City of Chicago states "[h]opefully these actions will reduce the need for disconnections and at least partially obviate the customer contact issue." (City of Chicago BOE, p. 4 (emphasis added).) They are unable to relate any empirical evidence suggesting the ALJPO's rejection of proposed Section 280.130(e)(5) actually will have

the health and safety consequences they fear. Notably, GCI admit that personal contact may not cure all potential problems associated with disconnection or prevent disconnection in every instance. (Tr. 278:13-15 (GCI witness Ms. Alexander testifying, “You can’t guarantee with a knock on the door that all things will be made right. I fully understand that.”).)² Moreover, as the ALJPO aptly recognizes, that “Illinois law prevents disconnections during cold or very hot weather, lessen[s] the danger to vulnerable customers.” (ALJPO, p. 189.) Put simply, AARP/AG, City of Chicago and LIRC’s position here is unfounded.

AARP/AG and the City of Chicago also rely on the Commission’s recent decision in Docket 12-0298, Commonwealth Edison’s petition for approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan filed under the Energy Infrastructure Maintenance Act, 220 ILCS 5/16-108.6, which governs Illinois electric utilities. (AARP/AG BOE, pp. 7-9; City of Chicago BOE, pp. 2-3.) Unlike the instant proceeding, however, Docket 12-0289 is not a proceeding of general applicability. Indeed, the City of Chicago acknowledges as much. (City of Chicago BOE, p. 4 (“Part 280, in contrast [to Docket 12-0289], will establish rules that will be effective indefinitely and for all utilities, not just ComEd.”).) Moreover, the Commission’s Order in that docket consistently defers to the determination ultimately made in this proceeding—in which the record is informed by a host of Illinois utilities and consumer advocates—regarding whether the new Part 280 rules will impose a premises visit requirement. Order, Docket 12-0289 (June 22, 2012), pp. 61-21. In this regard, the Commission states it “is confident that the Part 280 rulemaking will conduct the appropriate and lawful review of *all the issues and arguments* related to this important provision.” *Id.*, p. 61 (emphasis added). The ALJPO has done just that.

² LIRC also acknowledges the “value [of a premises visit] is lessened because of the inability of the utility personnel to accept payment.” (LIRC BOE, p. 4.)

AARP/AG recognize there are safety implications for utilities employees in the field in requiring a premises visit before disconnection. (AARP/AG BOE, p. 10 (proposing an exception to their proposed requirement for the safety of the utility employee).) LIRC also recognizes this as a “legitimate concern.” (LIRC BOE, p. 4.) (The City of Chicago fails to even address utility employee safety implications.) Considering this, the union representing the workers performing the disconnections and the utility—and not the consumer advocates here—are better poised to make judgment call about employee safety. (Staff Ex. 2.0, p. 76:1752-54.) Whether personal contact prior to disconnection is desirable should be left to the utility’s discretion. (IAWC Ex. FLR-2.0, pp. 10:217-11:229.) It should not be imposed in all cases as AARP/AG, the City of Chicago and LIRC propose.³ The ALJPO’s rejection of proposed Section 280.130(e)(5) should be approved.

H. Section 280.140 Disconnection for Lack of Access

Response to GCI Exception 13

GCI’s (lengthy) exception taken to ALJPO’s adoption of proposed Section 280.140 is peppered with “potential’s” and “possible’s.” (GCI BOE, pp. 36-40.) But what inexplicably is absent is any challenge to the ALJPO’s finding “language allowing disconnection of multi meter buildings for failure to provide access has been part of this subsection of Part 280 for many years and its utilization by utilities has apparently not engendered the adverse consequences articulated by GCI.” (ALJPO, p. 205.) This is a point GCI does not (and cannot) dispute. There is no evidence the possible harms GCI believe will result from retention of this provision have or will actually occur. Nevertheless, GCI continues to champion, as it did throughout the course of this

³ In fact, LIRC concedes a premises visit “may not be appropriate in every situation” and it suggests that the Commission order Staff to work with utilities to determine a way to limit the provision. (LIRC BOE, p. 4.)

proceeding, wholesale rejection of proposed Section 280.140. GCI's position is meritless and should be rejected.

GCI argues the ALJPO, in adopting proposed Section 280.140, fails to adequately account for potential health and safety concerns resulting from disconnection of multi-meter premises. (GCI BOE, pp. 37-38.) Yet, this argument ignores what the ALJPO already recognizes—Illinois law prevents electric and gas disconnections during cold or very hot weather. (See ALJPO, p. 189.) The ALJPO's proposed Section 280.140 explicitly incorporates that limitation. (ALJPO Attach. 1, p. 48 (Section 280.140(e).) That Section also requires the utility to seek access by *physical* visit. (Id. (Section 280.140(c)(1).) By GCI's own logic, that requirement alleviates any potential health and safety concerns resulting from disconnection. (See generally AARP/AG BOE; City of Chicago BOE.) GCI's concern in this regard therefore is unwarranted and inconsequential.

The crux of GCI's position against proposed Section 280.140, however, appears to be their belief that section does not account for circumstances in which co-tenants are unable to provide the access sought by the utility. (GCI BOE, pp. 38-39.) It is clear GCI have misread proposed Section 280.140. Not only does the section require repeated advance notice to co-tenants to permit them to undertake the necessary steps to avoid disconnection, (ALJPO Attach. 1, p. 47 (Section 280.140(c)(2)-(4)), but also the ALJPO incorporated within it heightened consumer protections—that paying customers be compensated with “more than just pocket change” for the inconvenience of disconnection and that a utility “not disconnect a building unless it has the resources in place and is prepared to reconnect service on the same day for customers who were not otherwise eligible for disconnection”—which GCI belittle or otherwise ignore. (ALJPO, p. 205; GCI BOE, p. 37 (contending those added protections “merely provide a

more advanced warning” of the protection afforded utilities in proposed Section 280.140).)

Given GCI’s biased (mis)reading of proposed Section 280.140, their recommendation to the Commission to reject it wholesale cannot be accorded weight.⁴

GCI’s contention in this regard also ignores the record evidence that a utility’s inability to access its facilities is *not* a problem of the utility’s own making or one which the utility always can control. GCI continue to argue, as they did in post-hearing briefing, that “the utility decided to install meters for the new tenant-customers in locations that it now complains it cannot access or in locations for which it did not assure access.” (GCI Init. Br. (Corr.), p. 75; GCI BOE, p. 39 (“Either a utility has a legal basis for its presence (and a right to access its facilities) or it has put its facilities at risk through an imprudent occupancy arrangement that needs correction.”).) That is wrong. As IAWC explained in its Initial Brief (pp. 40-41), its tariffs make clear customers *do* have input regarding the location of utility meters, and the customer also has an obligation to ensure access. (See ILL. C.C. No. 23, Original Sheet No. 9, Section 10(D) (IAWC’s Rules, Regulations and Conditions of Water Service) (providing the owner or customer shall choose an appropriate location for meter installation and “[t]he meter shall be located for easy accessibility for installation, maintenance, reading and disconnection”); *id.* Section 10(G) (providing in part, “[i]f the Customer requests a specific location for installation of the meter box or vault, the Company will comply with that request if feasible under proper utility standards”).⁵ Further, the record reflects water and sewer utilities in particular may not have had input into building changes that affect meter locations. This would be particularly true where utilities that acquire other utilities had no input into the meter locations of the acquired utility. Moreover, utilities

⁴ GCI also conveniently ignore new protections incorporated into proposed Section 280.140, such as field visits, notification and record keeping requirements, which the current rule lacks. (See Staff’s Init. Br., p. 69.)

⁵ *Available at* www.amwater.com/ilaw/customer-service/rates-information.html.

may lack any input into how buildings are used or subdivided by current owners and tenants. (IAWC Ex. FLR-2.0, p. 11:233-35; IAWC Init. Br., pp. 48-49.) As IAWC witness Mr. Ruckman testified, older buildings may be historic and, as such, renovations of those buildings must comply with specific criteria to preserve the historic designation. (IAWC Ex. FLR-2.0, p. 11:235-37.) Also, some multi-meter premises were not originally designed to house multiple tenants, but are later retrofitted for that purpose. (Id., p. 11:237-39.) In these circumstances, while the water and sewer utilities may have installed the original shut-off valve, they have no control over later subdivisions or renovations resulting in a multi-meter premises with only one shut-off valve. The same is true with respect to older strip malls; when original tenants vacate the premises, the facilities are reconfigured for new tenants. (Id., p. 11:238-40.) In such situations, absent Section 280.140 as adopted by the ALJPO, only one tenant need pay to prevent the water or sewer utility from being able to disconnect service or threaten disconnection in order to collect funds due. GCI does not consider these factors and, indeed, ignores them. GCI's position therefore is unfounded.

As an alternative to their extreme recommendation to reject proposed Section 280.140 in its entirety (GCI BOE, pp. 40-41), GCI recommend the section be modified to include a requirement that the utility verify that co-tenants other than the non-paying customer can lawfully provide the access to meters the facility seeks. (GCI BOE, p 41.) This recommendation is unsupported by the record. Moreover, GCI does not explain how this proposal would even work; it is unclear precisely *how* utility personnel could *verify* whether a building tenant has *lawful* access to a part of the premises absent a search of property records or even a civil proceeding. GCI's alternative proposal is unworkable and, like its extreme wholesale rejection of proposed Section 280.140, should be rejected.

The absence of the threat of disconnection to multi-meter premises incentivizes tenants in buildings with one shut-off valve to not pay their utility bills as long as one tenant pays. However, all ratepayers absorb the costs of unpaid bills. As such, utilities have an obligation to the entire body of their ratepayers to limit uncollectibles. The only realistic enforcement mechanism for this is disconnection of service or the threat of disconnection. This applies with equal force to multi-meter premises. (IAWC Init. Br., p. 49; IAWC Ex. FLR-2.0, p. 11:230-47.) The potential consequences of such a remedy have not been shown to actually come to fruition, as the ALJPO aptly acknowledges. (ALJPO, p. 205.) Accordingly, the balanced remedy created by the ALJPO in fashioning proposed Section 280.140 (ALJPO Attach. 1, pp. 47-48) is appropriate and should be approved.

I. Section 280.170 Timely Reconnection of Service—Subsection 280.170(b)

Response to GCI Exception 15

GCI take exception to the four- and seven-calendar day reconnection periods set forth in proposed Subsection 280.170(b)(3) and (4) (for electric/water/sewer and gas, respectively). As stated, the current Part 280 rules do not impose service activation or reconnection timelines. (See supra II.D.) Despite that absence, “it is GCI’s understanding that most utilities complete service orders and restoration of service within much shorter time frames [than the four- and seven-calendar day ones called for by the ALJPO], and that the time frames reflected in Staff’s rule [only] were intended to accommodate situations in which shorter time frames could not be assured due to operational and external factors.” (GCI BOE, p. 50. See also GCI Init. Br. (Corr.), p. 85 (“[M]ost utilities complete service orders and restoration of service within much shorter timeframes”).) In other words, Illinois utilities’ current practice (as GCI acknowledges) is to reconnect service in less than those timeframes, but, under the rules proposed by the ALJPO they will be *required*, absent certain exceptions beyond utility control,

to reconnect service within those timeframes or compensate customers for the failure to do so. (ALJPO, pp. 50-51.) GCI are not satisfied.

Without citation to the record, GCI contend this new requirement somehow will incent utilities to *change* their current practice, *delay* service reactivation, and, as a result, *forego* revenues. (GCI BOE, p. 50 (claiming the ALJPO’s reconnection timelines “would provide an incentive for utilities to slow down the reconnection process as compared to the current practice . . .”).) But GCI fail to support that contention with record evidence.

Also unsupported in the record is GCI’s implication that reconnection within the timeframe it champions—two calendar days for all utilities—is even feasible. As the ALJPO aptly notes, “[t]he Commission is cognizant that extreme weather conditions or other circumstances experienced in Illinois service areas create situations where the two day reconnections recommended by AARP and GCI *are not feasible*.” (ALJPO, p. 221 (emphasis added).) But, rather than look to the record for support for their proposition, GCI point to requirements in other states which may, in fact, result in *longer* reconnection periods than the four-calendar day periods ALJPO adopts. Respectfully, the record in this Illinois proceeding should be the basis of any Commission findings. That record thoroughly supports the balanced approach adopted by the ALJPO in proposed Section 280.170. It should be approved.

J. Section 280.170 Timely Reconnection of Service—Subsection 280.170(f)

Response to GCI Exception 15

GCI also take issue with the narrowly tailored exception the ALJPO incorporates into Section 280.170 for “unforeseen circumstances.” (ALJPO Attach 1, p. 51 (Section 280.140(f)).) Although this exception applies only in the event of “temporary *unanticipated* overload of [a utility’s] ability to provide for the timely reconnection” (*id.*), GCI argue it is too broad and may encompasses circumstances within the utility’s control, such as adding workers during peak

hours. (GCI BOE, p. 51.) In so arguing, GCI reads “unanticipated” right out of that section. Moreover, GCI claims “no party has suggested that the expense associated with . . . additional hires, if needed, would not be recoverable in a future rate case.” (Id.) Given that admission, it is unclear why GCI believes a four-calendar day reconnection period would somehow incentive utilities *not* to hire the employee complement need to timely reconnect service. GCI also assert the ALJPO did not address this point. (Id.) In fact, it did. The ALJPO finds “AARP and GCI objections to this language overlook the practicalities of providing service under extreme conditions which sometimes occur in Illinois.” (ALJPO, pp. 222-23.)

In sum, GCI’s exceptions to proposed Section 280.170 are meritless. The ALJPO’s new reconnection (and connection) timelines are balanced, necessary and appropriate for the reasons discussed above and those regarding Section 280.30. (See supra II.D.) They should be approved.

III. CONCLUSION

For the reasons stated above, IAWC submits that the above discussed exceptions to the ALJPO and First Notice Proposed Rules (ALJPO Attachment 1) be rejected and that the ALJPO and First Notice Proposed Rules be approved subject to the revisions proposed by IAWC and set forth in its Brief on Exceptions.

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Respectfully submitted,

Illinois-American Water Company

By: /s/ Albert D. Sturtevant

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, certify that on July 20, 2012, I caused a copy of the foregoing *Reply Brief on Exceptions of Illinois-American Water Company* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 06-0703.

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